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VIA ELECTRONIC FILING

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**Re: State Universal Service Support of Basic Local Service included in a
Bundled Service Offering or Contract Offering
Docket No. 2009-326-C**

Dear Jocelyn:

Attached for filing on behalf of the South Carolina Cable Television Association and tw telecom of sc please find our petition for rehearing and reconsideration in the above referenced docket. By copy of this letter we are serving the same on all parties of record. Should you have any questions, please contact me.

Yours truly,

ROBINSON, MCFADDEN & MOORE, P.C.

Frank R. Ellerbe, III

FRE/bds
Enclosure

cc/enc: F. David Butler, Commission Hearing Officer (via email)
Other parties of record (via email & U.S. Mail)

Jocelyn Boyd, Chief Clerk of the Commission
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bcc/enc: Mr. Ray Sharpe (via email)
 Ms. Carolyn Ridley (via email)

**BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA
DOCKET NO. 2009-326-C**

In Re:)	
)	
State Universal Service Support of Basic)	
Local Service Included in a Bundled)	PETITION FOR REHEARING AND
Service Offering or Contract Offering)	RECONSIDERATION
)	
)	
)	
)	

Pursuant to S.C. Code Section 58-9-1200 and 26 S.C. Code Regs. 103-854, this petition for rehearing and reconsideration of Order No. 2010-337 is submitted by the South Carolina Cable Television Association and tw telecom. For the following reasons the Commission should rehear and reconsider its findings and conclusions in Order No. 2010-337 and issue an order holding that lines that are sold as parts of bundles or contract services are not eligible for support from the South Carolina Intrastate Universal Service Fund ("SC USF"). In support of this petition for rehearing and reconsideration, the petitioners would show the following.

1. The Commission has a statutory obligation to establish a SC USF for distribution to Carriers of Last Resort.

In continuing South Carolina's commitment to universally available basic local exchange telephone service at affordable rates and to assist with the alignment of prices and/or cost recovery with costs, and consistent with applicable federal policies, the commission shall establish a universal service fund for distribution to a carrier(s) of last resort.

S.C. Code Ann. §58-9-280(E). As indicated in the statute, the purpose of the fund is to ensure that *basic local exchange telephone* service is available at affordable rates. Since

the inception of the USF, until the issuance of Order No. 2010-337, the Commission has carried out its statutory mandate to maintain basic service at affordable rates by limiting USF support to *regulated* services as to which the Commission controlled the maximum price. In allowing USF subsidies to support unregulated, bundled services Order No. 2010-337 conflicts with S.C. Code Section 58-9-280(E) and this Commission's prior orders implementing the USF.

2. The definition of services that can be supported by the SC USF can only be expanded after a hearing specifically addressing that issue. S.C. Code §58-9-280(E)(8). The Commission has not previously held a hearing to address the specific issue of whether access lines sold as parts of deregulated bundles or contract offerings should receive USF support. Order No. 2010-337 fails to recognize that the Commission is expanding the scope of services supported by USF subsidies and fails to make the findings required by S.C. Code §58-9-280(E)(8). For these reasons Order No. 2010-337 conflicts with controlling statutory provisions.

3. The Commission has previously issued orders establishing the SC USF in part by adopting Guidelines and Administrative Procedures to implement the fund. See USF Order Nos. 2001-419 & 2001-996. The SC USF statute requires that the Guidelines address several specific items including the critical requirement that a supported service be subject to a maximum allowable rate. The maximum rate is instrumental in determining both the size of the SC USF and the distributions from the fund.

(4) The size of the USF shall be determined by the commission and shall be the sum of the difference, for each carrier of last resort, between its costs of providing basic local exchange services and the *maximum amount it may charge for the services*. The commission may use estimates to establish the size of the USF on an annual basis, provided it establishes a mechanism for adjusting

any inaccuracies in the estimates.

- (5) Monies in the USF shall be distributed to a carrier of last resort upon application and demonstration of the amount of the difference between *its cost of providing basic local exchange services and the maximum amount it may charge for such services*.

S.C. Code §58-9-280(E)(4) & (5) (emphasis added). Order No. 2010-337 conflicts with these controlling statutory provisions because it allows USF subsidies to be paid to support services as to which, as a matter of law, there is no “maximum rate that can be charged.”

4. In 2005, bundles and contract offerings were deregulated. S.C. Code Section 58-9-285(B) provides that the

Commission must not:

- (1) impose any requirements related to the terms, conditions, rates, or availability of any bundled offering or contract offering of any qualifying LEC or qualifying IXC that a customer accepts after the effective date of this act; or
- (2) otherwise regulate any bundled offering or contract offering of any qualifying LEC or qualifying IXC that a customer accepts after the effective date of this act....

The plain language of this section provides that the Commission has no jurisdiction over what rates can be charged for bundled or contract offerings. “When a statute’s language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed, and this court has no right to impose another meaning.” *Peake v. SC Dept. Motor Vehicles*, 375 S.C. 589, 654 S.E.2d 284, 289 (Ct. App. 2007). Section 58-9-285 is plain and unambiguous. The Commission must not impose any requirements related to the terms, conditions, rates, or availability or

otherwise regulate any bundled or contract offering. The Commission is not allowed to impose a maximum rate or otherwise regulate any bundle or contract offering. To the extent that the bundle includes local exchange service, that service is unregulated and this Commission has no control over where it is offered or at what price. Order No. 2010-337 conflicts with controlling statutory provisions by allowing services that are unregulated to be subsidized by the USF.

5. Order No. 2010-337 fails to recognize that the General Assembly distinguished bundled offerings from “basic local exchange service” by definition. A “bundled offering” is “an offering of two or more products or services to customers at a single price provided that (1) the bundled offering must be advertised and sold as a bundled offering at rates, terms or conditions *that are different* than if the services are purchased separately from the LEC’s tariffed offerings.” S.C. Code § 58-9-285(A)(1)(a)(i)(emphasis added). This statutory language is also plain and unambiguous. A bundled offering is something other than a regulated, tariffed offering. Most critically, a bundled offering is not the “basic local telephone service at affordable rates” that the USF was created to protect. For these reasons, Order No. 2010-337 conflicts with controlling statutory provisions by allowing USF subsidies to support bundles and contract offerings.

6. Order No. 2010-337 fails to properly analyze the evidence presented in this proceeding. At the hearing in this docket testimony on how bundles are priced further supported the finding that the local access line component of a bundle is different from the regulated “basic local exchange service” with a maximum rate as required for the SC USF calculations. The COLRs testified that market forces and competition now

dictate the prices of deregulated bundled and contract service offerings instead of a maximum tariff rate. (Tr. 39). A company can raise the price of a bundle at any time without seeking permission from the Commission. (Tr. 69-70, 83-84). CenturyLink witness Prockish testified that only competition ensures that the end user does not overpay for bundled or contract services. (Tr. 39). Coalition Witness Oliver also testified that deregulation was a pricing or marketing issue and a matter of being able to meet competitive pricing. (Tr. 338-339). As indicated by the COLRs, competition determines the price for bundles and contract offerings. SC USF support is not needed or appropriate for market-priced, deregulated service offerings. Order No. 2010-337 fails to find support in the record of this proceeding for its conclusion that bundles and contract offerings should be supported by subsidies from the USF. The finding that such subsidies should be available is clearly erroneous in view of the reliable, probative and substantial evidence on the whole record.

7. Order No. 2010-337 fails to consider another critical distinguishing characteristic between “basic local exchange service” and access lines included in bundles or contract offerings. COLRs are statutorily required to provide basic local exchange service to all residential and single-line business customers within a defined service area. See S.C. Code §58-9-10(10). However, COLRs are not required to provide bundled or contract service offerings to all customers within their service area. As Witness Oliver testified, the companies choose where to offer bundles and how much to charge for them. (Tr. 77, 134, 328). Because this Commission has no jurisdiction over the provision of bundles or contract offerings, it cannot take steps to ensure that bundles are affordable or even that they are available to customers in South Carolina.

Accordingly, the determination in Order No. 2010-337 that such services should be permitted to be subsidized by the USF is clearly erroneous in view of the reliable, probative and substantial evidence on the whole record.

8. Order No. 2010-337 commits legal error in finding that failure to provide USF subsidies for bundles and contract offerings would make the SC USF procedures inconsistent with the Federal USF procedures. In fact, the FCC has not addressed the question of whether deregulated bundles should receive Federal USF support. The FCC Order cited by ORS actually held that the list of Federal USF supported services should not be expanded to include additional services including advanced or high-speed services, unlimited local usage, soft dial tone, prepaid calling plans, toll or expanded area service and others.¹ The FCC held that the public interest would not be served by expanding the list of supported services from the core supported services in place.² The FCC defined the “core” services to be supported by the Federal USF as follows:

single-party service; voice grade access to the public switched network; DTMF signaling or its functional equivalent; access to emergency services; access to operator services; access to interexchange services; access to directory assistance; and toll limitation services for qualifying low-income consumers.³

This definition of core services to be supported is almost identical to S.C. Code Section 58-9-10(9)’s definition of “basic local exchange service.” The FCC held that the current list of supported services strikes the right balance between ensuring the availability of fundamental telecommunications services to all Americans and

¹ *Federal-State Joint Board on Universal Service*, Order & Order on Reconsideration, CC Docket No. 96-45, 18 FCC Rcd. 15090, 15090-15093 (July 14, 2003)(“FCC Reconsideration Order”).

² FCC Reconsideration Order, ¶ 7.

³ FCC Reconsideration Order, ¶ 5, *citing Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8809, ¶61 (1997)

maintaining a sustainable universal service fund.⁴ The conclusion of Order No. 2010-337 that a failure to provide USF subsidies for bundles and contract offerings would be inconsistent with federal law is clearly erroneous in view of the reliable, probative and substantial evidence on the whole record.

For the reasons stated in this petition, petitioners South Carolina Cable Television Association and tw telecom request that the Commission issue rehear this matter and issue an order providing revisions to its Guidelines and Administrative Procedures clarifying and explicitly requiring that COLRs not be permitted to recover any subsidies from the USF for lines that are sold as parts of bundles or contract offerings.

This 26th day of July, 2010.

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⁴ FCC Reconsideration Order, ¶ 7.

BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA

DOCKET NO. 2009-326-C

IN RE:

State Universal Service Support of Basic
Local Service Included in a Bundled
Service Offering or Contract Offering

CERTIFICATE OF SERVICE

This is to certify that I, Leslie Allen, a legal assistant with the law firm of Robinson, McFadden & Moore, P.C., have this day caused to be served upon the person(s) named below **SOUTH CAROLINA CABLE TELEVISION ASSOCIATION, , tw telecom of south carolina llc's PETITION FOR REHEARING** in the foregoing matter by placing a copy of same in the United States Mail, postage prepaid, in an envelope addressed as follows:

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Dated at Columbia, South Carolina this 26TH day of July, 2010.



Leslie Allen